

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 43 OF 2016.

Mrs. Hema Myer Sood, wife of Mr. Sandeep Sood, Indian national, major in age, sole proprietor of M/s Popular Construction Company, a sole proprietorship concern, carrying out its business at H. No. 109, Chicalim, Goa- 403 711.

..... Petitioner.

Versus

1. The Executive Engineer, Works Division XIII, Water Resource Department, Gogal-Margao.
2. The Revenue Recovery Officer, Case No. MAM/MOR/RECOVERY/6/2015, Vasco da Gama, Goa.
3. State of Goa through chief Secretary, Secretariat, Panjim, Goa.

..... Respondents.

Mr. B. Khandeparkar, Advocate for the petitioner.

Ms. S. Linhares, Additional Government Advocate for the respondents.

Coram:-F. M. REIS,

K. L. Wadane,JJ.

Reserved on:19th January, 2016.

Pronounced on:-20th January, 2016.

JUDGMENT (Per K. L. Wadane, J)

Heard Mr. B. Khandeparkar, learned Advocate appearing for the petitioner and Ms. S. Linhares, learned Additional Government Advocate appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned counsel appearing for the parties. The learned Additional Government Advocate for the respondents waives service.

3. The present petitioner filed this Writ Petition seeking to quash the demand notice dated 8.5.2015 issued by the respondent no. 2 thereby demanding an amount of Rs. 6,42,827/- and another notice dated 15.10.2015 demanding Rs. 11,00,000/-.

4. Brief facts of the case may be stated as follows:-

The petitioner is doing the business under the name and Style of M/s Popular Construction Company dealing with repairing and servicing of construction machinery. The petitioner obtained a permission for transportation of ground water under Section 6(2) of the Goa Ground Water(Regulation) Act, 2002.

5. On 9.12.2014, the respondent no. 2 issued demand notice calling upon the petitioner to make the payment of Rs. 6,42,827/- in terms of the rate schedule prescribed for drawl of ground water, instead of the charges payable by the transporters of ground water which is a fixed annual charge of Rs.5000/- only.

6. On 26.2.2015, the petitioner was granted personal hearing and the petitioner convinced the respondent no.1 that the demand raised on the petitioner was erroneous.

7. The respondent no.1 wrote a letter to the Assistant Engineer pointing out that the schedule relied upon to raise the bill on the petitioner's enterprise was erroneous and it should be in accordance with the fixed annual fees prescribed towards transportation. The respondent no.1 opined that as per the notification the petitioner could be charged Rs. 3000/- or Rs.5000/- annually for transportation of the ground water. Despite the letter of the respondent no.1, the respondent no.1 initiated recovery proceedings against the petitioner for recovery of an amount of Rs.6,42,827/- and Rs.11,00,000/-, which is challenged in the present Writ Petition.

8. We have heard the arguments of Mr. B. Khandeparkar, learned counsel appearing for the petitioner and Ms. S. Linhares, learned Additional Government Advocate for the respondents.

9. During the course of arguments, Mr. Khandeparkar, learned Counsel has disputed that the respondents are not entitled to recover the water drawl charges as the petitioner is

only dealing with the business of transportation of a water and for that purpose there is fixed annual charges either Rs. 3000/- or Rs.5000/-. According to Mr. Khandeparkar, the charges sought to be recovered from the petitioner are charges of the drawl of the water which could be recovered from the owners of the well and not from the petitioner. So according to Mr. Khandeparkar, demand notice and the action of initiation of recovery proceedings is contrary to the notification issued by the respondent no. 3 from time to time.

10. Relying upon the notifications dated 13.10.2008 and 19.3.2013, Mr. Khandeparkar has argued that the respondents are only entitled to recover an amount of Rs.5000/- per annum on account of transportation of the water.

11. Ms. Linhares, learned Additional Government Advocate has argued that the charges under the demand notice are of drawl of the water, particulars of the quantity of the water drawn by the petitioner has been specifically mentioned. Even further, Ms. Linhares, has argued that the present Writ petition is not maintainable as there is alternate remedy available to the petitioner to file an appeal under the provisions of Section 20 of the Goa Ground Water Regulation Act, 2002 and Rules 2003.

12. Considering the arguments advanced by both the sides, it appears that whether the charges levelled against the petitioner and demanded by way of above two notices is the disputed question of facts which cannot be examined in a Writ Petition under Articles 226 and 227 of the Constitution of India. The petitioner is entitled to raise such ground in appeal but certainly the question of disputed fact cannot be examined in the present petition. Section 20 of the Goa Ground Water Regulation Act, 2002 deals with the provisions of appeal which reads as follows:-

20. Appeals.— (1) Any person aggrieved by a decision or action of the Ground Water Officer under this Act, may, within a period of thirty days from the date on which the action is taken or the decision is communicated to him and on payment of such fees as may be prescribed, prefer an appeal to the prescribed authority:

Provided that, the prescribed authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the prescribed authority shall, after giving the appellant an opportunity of being heard,

dispose of the appeal as expeditiously as possible.

13. Looking to the above provisions, it appears that the petitioner has remedy to file the appeal under Section 20 Goa Ground Water(Regulation) Act, 2002 because two notices issued to the petitioners are action taken by the ground water officer under this Act. Therefore, the petitioner certainly has remedy to appeal instead of filing an Writ Petition. Mr. Khandeparkar, learned counsel appearing for the petitioner has argued that proceedings cannot be initiated to recover the amount allegedly to be due from the petitioner as an arrears of land revenue. The learned Mr. Khandeparkar, as such, restricts its challenge in the above Writ Petition to examine whether the respondents have power of jurisdiction to issue the impugned notices under the Goa Daman and Diu Land Revenue Code, 1968. It is useful to refer to the "Land Revenue" definition under Section 2(20) of the Goa Daman and Diu Land Revenue Code, 1968 and the Rules which reads as follows:-

"land revenue" means all sums and payments, in money received or legally claimable by or on behalf of the Government from any person on account of any land or interest in or right exercisable over land held by or vested in him, under whatever designation such sum may be

payable and any cess or rate authorised by the Government under the provisions of any law for the time being in force; and includes premium, rent lease money, or any other payment provided under any Act, rule, contract or deed on account of any land;

14. On perusal of the above provisions it appears that the land revenue means and includes any other payment provided under any Act on account of any land. The word "land" cannot be assigned a narrow meaning so as to confine it to the surface of the earth it includes all strata above and below. In other words the word "Land" includes not only the surface of the earth but everything under and over it and has in its legal significance an indefinite extend upward and down ward

In such circumstances, any sum payable on account of the users of the benefit of the land which are authorised by the Government can be recovered as the land revenue. So from the definition of the Land Revenue, it is crystal clear that the State Government or the respondent can recover the charges of a alleged water drawl, as arrears of land revenue.

15. Looking to the facts and circumstances of the case, and the above referred provision, we do not agree with the submissions of Mr. Khandeparkar, that the respondents are not entitled to recover the amount allegedly to be due from the

petitioner as an arrears of the land revenue.

16. Consequently, there is no substance in the Writ Petition, accordingly, it is dismissed with no order as to costs.

17. Rule stands discharged.

 K. L. WADANE, J.
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 F. M. REIS, J.